

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

In re: )  
                        )  
                        )  
Brian Matthew Hobbs,         ) Case No. 20-12235-JDL  
                        ) Chapter 13  
Debtor.                      )  
                        )

**DEBTOR'S MOTION TO DISMISS WITHOUT PREJUDICE  
AND BRIEF IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

**Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document.** If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave., Oklahoma City, OK 73102 no later than fourteen (14) days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant's attorney and all others required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

**The 14-day period for response includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).**

Brian Matthew Hobbs, debtor in the above-captioned case ("Debtor"), by and through his attorney, Jason A. Sansone, pursuant to 11 U.S.C. § 1307(b) and Local Rule 1017-1(G), hereby requests the Court dismiss this Chapter 13. In support of this Motion, Debtor shows the Court as follows:

1. That on July 1, 2020, the Debtor filed a Chapter 13 Bankruptcy Petition seeking relief in the United States Bankruptcy Court for the Western District of Oklahoma ("Petition Date") [Doc. No. 1].
2. The Debtor has never previously sought bankruptcy protection. The above styled and numbered case is Debtor's only bankruptcy.

3. As of the date of filing this pleading, there is a pending Motion to Dismiss or Convert [Doc. No. 19], an Objection to Confirmation from creditor OSU Foundation Real Estate, LLC (“OSUF”) [Doc. No. 18], an Objection to Confirmation from the Oklahoma Tax Commission [Doc. No. 23], an Objection to Confirmation from creditor First National Bank & Trust Company of Weatherford [Doc. No. 28], an Objection to Confirmation from the Trustee, John Hardeman [Doc. No. 31], and an Objection to Debtor’s Exemptions [Doc. No. 35] (the “Contested Matters”).

4. In addition, Defendant’s prior counsel filed a Motion to Withdraw on August 25, 2020 [Doc. No. 37].

5. No party has filed a request for relief from the automatic stay. *See* 11 U.S.C. § 109(g)(2).

6. This case has not been previously converted and there are no existing binding arrangements or agreements between the Debtor and any creditors or any person or entity in connection with this Motion.

7. The Contested Matters are set for hearing on September 22, 2020.

8. The pending Motion to Dismiss or Convert filed by creditor OSU Foundation Real Estate [Doc. No. 19] is based, in part, upon the allegation that Debtor exceeds the debt limits contained in 11 U.S.C. § 109(e). After further review with newly retained undersigned counsel, Debtor concedes that he exceeds § 109(e) debt limits. The debtor is not eligible to continue this case under Chapter 13 because he exceeds the statutory limits. *In re Glazier*, 69 B.R. 666 at 669 (Bankr. W.D. Okla. 1987); *In re Mosley* (Bankr. S.D. Ill. 2018) (citing *In re Pratola*, 2018 WL 4181498 (N.D. Ill. Aug. 31, 2018)) (“a debtor who exceeds the statutory debt limits cannot obtain Chapter 13 relief, there is no basis for allowing the case to continue under

that chapter and accordingly, the court concluded that the case must be dismissed or converted”).

9. This court is without jurisdiction to hear the matter further because it is without power to grant relief. *In re Glazier*, 69 B.R. 666 at 669 (citing *In re Tashman*, 13 B.R. 549 (Bankr. D. Vt. 1981); *In re Kelsey*, 6 B.R. 114 (Bankr. S. D. Tex. 1980)). Thus, this case must be dismissed or converted. *Id.*

10. On request of the Debtor at any time, if the Chapter 13 case has not been converted under § 706, 1112, or 1208 of this title, the court shall dismiss the case. 11 U.S.C. § 1307(b).

11. Dismissal is available to the Debtor as of right. Cf. *In re Blaise*, 219 B.R. 946 (B.A.P. 10th Cir. 1998) (“[d]ismissal under section 1307(b) was not available to him as of right as this right evaporated under the earlier conversion”).

12. However, OSUF seeks an Order dismissing this matter with prejudice as to the Debtor’s ability to refile a bankruptcy petition for six (6) months [Doc. No. 15].

13. “Unless the court, for cause, orders otherwise, the dismissal of the case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in Section 109(g) of this title” (emphasis added). *In re Hancock* (Bankr. W.D. Okla. 2015) (citing 11 U.S.C. § 349(a)).

14. As previously identified by Debtor’s prior counsel in Debtor’s Objection to Motion to Dismiss [Doc. No. 29], OSUF fails to cite any case law in support of its request for dismissal with prejudice. OSUF does not attempt to define “good faith” or “bad faith”, even though those terms are not defined in the Bankruptcy Code. OSUF discusses § 1307 and § 1325,

but those sections of the Bankruptcy Code are not holding with regards to a debtor's right to file a subsequent petition. At no time does OSUF discuss § 349.

15. "The court has discretion to determine what type of conduct constitutes "cause" ... namely, whether (1) the debtor demonstrated bad faith or defiance, and (2) whether the debtor's conduct was abusive or prejudicial to creditors." *In re Hancock* at 12 (Bankr. W.D. Okla. 2015) (citing *In re Norton*, 319 B.R. 671 (Bankr. D. Utah 2005)). "[A] section 349(a) dismissal must be premised on a debtor's exhibition of additional undesirable or egregious conduct that goes beyond the type of conduct that would justify a 'for cause' or bad faith dismissal under sections 1307 or 1325. Some courts have referred to this conduct as 'contumacious' or a 'pattern of evasion'. *Id.*

16. This is Debtor's only bankruptcy, he has paid all court filing fees, there has not been any Orders to Show Cause or Motions for Contempt, and contrary to OSUF's allegations the Debtor filed the instant case due to a pending lawsuit from Pawnee Leasing Corp. See Doc. No. 29 at 8; Doc. No. 11 at 40. Further, Debtor believes that with the proper amendments to his Schedules and Statement of Financial Affairs, a Plan could be proposed which could be confirmed. However, it would be moot for Debtor to file an Amended Chapter 13 Plan in light of Debtor's inability under § 109(e) to remain in Chapter 13.

17. This case was filed as an "emergency petition", effectively denying Debtor and his prior counsel the time and information to make a proper § 109(e) debt limit analysis. The Debtor, a lay person without any prior knowledge of bankruptcy law, was unaware of the limits proscribed in § 109(e). Debtor's statutory ineligibility to remain in Chapter 13, an issue he was not made aware of until after the filing of a petition, is not evidence of contumacious conduct or a pattern of evasion.

WHEREFORE, for the foregoing reasons, the Debtor requests the Court dismiss this Chapter 13 case without prejudice to refiling pursuant to the provisions of 11 U.S.C. Section 1307(b).

Respectfully Submitted,

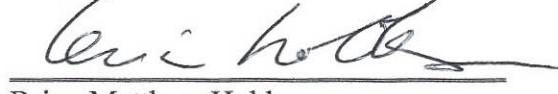
  
\_\_\_\_\_  
Brian Matthew Hobbs  
Debtor

**SANSONE HOWELL PLLC**

/s/ Jason A. Sansone  
\_\_\_\_\_  
Jason A. Sansone, OBA No. 30913  
Sansone Howell PLLC  
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**PROPOSED COUNSEL FOR DEBTOR**

**AFFIDAVIT OF DEBTOR BRIAN MATTHEW HOBBS**

In compliance with Local Rule 1017-1(G), I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
\_\_\_\_\_  
Brian Matthew Hobbs  
Debtor

**CERTIFICATE OF MAILING/ELECTRONIC TRANSMISSION**

I, Jason A. Sansone, hereby certify that on September 4, 2020, a true and correct copy of the above Motion was electronically served using the CM/ECF system to the United States Trustee, John Hardeman, Chapter 13 Trustee, and served by U.S. Mail, first class, postage prepaid on the attached mailing matrix.

/s/ Jason A. Sansone

Jason A. Sansone, OBA 30913

Label Matrix for local noticing

1087-5

Case 20-12235

Western District of Oklahoma

Oklahoma City

Fri Sep 4 13:26:35 CDT 2020

RCB Bank

c/o Karen Carden Walsh, Esquire  
Riggs, Abney  
502 West 6th Street  
Tulsa, OK 74119-1016

OSU Foundation Real Estate, LLC

400 S. Monroe

Stillwater, OK 74074-3322

Oklahoma Tax Commission

100 N. Broadway Ave, Ste. 1500  
Oklahoma City, ok 73102-860124 Capital  
31-10 37th Ave  
Long Island City NY 11101-2128Synchrony Bank  
c/o PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021USBC Western District of Oklahoma  
215 Dean A. McGee  
Oklahoma City, OK 73102-3426ABCO Rents  
2033 E 11th St  
Tulsa OK 74104-3623Albright Rusher & Hardcastle  
2600 Bank of America Center  
15 W 6th St  
Tulsa OK 74119-5434American Express  
PO Box 650448  
Dallas TX 75265-0448American Express National Bank  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern PA 19355-0701Arvest  
Security Bankcard Center  
PO Box 6319  
Norman OK 73070-6319Arvest Bank  
1188 N. Salem Rd. Suite 12  
Fayetteville, AR 72704-8804(p)ARVEST BANK  
P O BOX 11110  
FORT SMITH AR 72917-1110Ascentium Capital LLC  
23970 Highway 59 North  
Kingwood TX 77339-1535(p)BANK OF AMERICA  
PO BOX 982238  
EL PASO TX 79998-2238Bank Of America, N.a.  
Po Box 45144  
Jacksonville FL 32232-5144Bank of America, N.A.  
P O Box 982284  
El Paso, TX 79998-2284Bank of America, N.A.  
PO BOX 31785  
Tampa, FL 33631-3785Best Buy/cbna  
Po Box 6497  
Sioux Falls SD 57117-6497Bloom/dsnb  
Po Box 8218  
Mason OH 45040-8218Blue Bridge Financial  
201 Buffalo  
Buffalo NY 14203Capital One  
PO Box 5253  
Carol Stream IL 60197-5253Capital One  
POB 30285  
Salt Lake City UT 84130-0285Capital One Bank (USA), N.A.  
4515 N Santa Fe Ave  
Oklahoma City, OK 73118-7901Capital One Bank Usa N  
Po Box 30281  
Salt Lake City UT 84130-0281Capital One N.A.  
4515 N Santa Fe Ave  
Oklahoma City, OK 73118-7901Citibank, N.A.  
5800 S Corporate Pl  
Sioux Falls, SD 57108-5027Citicards Cbna  
Po Box 6217  
Sioux Falls SD 57117-6217Credit One Bank Na  
Po Box 98872  
Las Vegas NV 89193-8872

DSA Factors  
3126 N Lincoln Ave  
POB 577520  
Chicago IL 60657-7335

Department Stores National Bank  
c/o Quantum3 Group LLC  
PO Box 657  
Kirkland, WA 98083-0657

Ebay/Mastercard  
PO Box 960080  
Orlando FL 32896-0080

Emerald Hills Capital Management  
Outbound Capital  
355 S Teller #200  
Denver CO 80226-7391

Estate of Jack Vassar  
c/o Atty Tim Green, PC  
213 East Oklahoma Ave.  
Guthrie OK 73044-3244

Expansion Capital  
5801 S Corporate Place  
Sioux Falls SD 57108-5027

Financial Pacific Leasing Inc  
POB 4568  
Federal Way WA 98063-4568

First National Bank & Trust Co Weatherfo  
4611 W 6th St  
Stillwater OK 74074-1551

First National Bank & Trust Company, Weather  
4611 W. 6th Ave.  
Stillwater, OK 74074-1551

Fundamental Capital LLC  
Sparks Funding  
301 Mission St  
San Francisco CA 94105-2243

Green Capital Funding LLC  
116 Nassau St Ste 804  
New York NY 10038-2481

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Saint Paul MN 55164-0378

(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

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Boca Raton, FL 33487-2853

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BANKRUPTCY MAIL INTAKE TEAM  
700 KANSAS LANE FLOOR 01  
MONROE LA 71203-4774

K&K Interiors  
2230 Superior St  
Sandusky OH 44870-1843

Kabbage  
925 B Peachtree St NE  
Ste 1688  
Atlanta GA 30309-3918

LVNV Funding, LLC  
Resurgent Capital Services  
PO Box 10587  
Greenville, SC 29603-0587

Loanbuilder  
3505 Silverside Rd  
Wilmington DE 19810-4905

MM Funding Group  
114-116 Ditmas Ave  
Brooklyn NY 11218-4902

Macy's  
PO Box 8058  
Mason OH 45040-8058

Melrose International  
1400 N 30th St  
Ste 22  
POB 3441  
Quincy IL 62305-3441

Merrick Bank Corp  
Po Box 9201  
Old Bethpage NY 11804-9001

National Funding Inc.  
9820 Towne Centre Dr  
Ste 200  
San Diego CA 92121-1944

OSU Foundation Real Estate  
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Oklahoma City OK 73102-7216

OSU Foundation Real Estate, LLC  
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On Deck Capital, Inc.  
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Denver, CO 80202-5167

PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021

(p) PAWNEE LEASING CORPORATION ATTN SANDI CAR  
3801 AUTOMATION WAY  
STE 207  
FORT COLLINS CO 80525-5735

Pawnee Leasing Corporation  
c/o Albright, Rusher & Hardcastle  
2600 Bank of America Center  
15 West Sixth Street  
Tulsa OK 74119-5434

(p) PORTFOLIO RECOVERY ASSOCIATES LLC  
PO BOX 41067  
NORFOLK VA 23541-1067

RCB Bank  
Karen Carden Walsh  
Riggs, Abney, 502 West 6th Street  
Tulsa OK 74119-1016

RCB Bank Stillwater  
324 S Duck  
Stillwater OK 74074-3218

Raz Imports  
1020 Eden Rd  
Arlington TX 76001-7885

Telecom Self-reported  
Po Box 4500  
Allen TX 75013-1311

The Florist Federal Credit Union  
404 N Kentucky Ave  
Roswell NM 88201-4719

US Attorney's Office/Oklahoma  
210 Park Ave., #400  
Oklahoma City OK 73102-5628

United States Trustee  
United States Trustee  
215 Dean A. McGee Ave., 4th Floor  
Oklahoma City, OK 73102-3479

Utility Self-reported  
Po Box 4500  
Allen TX 75013-1311

Brian Matthew Hobbs  
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Stillwater, OK 74074-1065

John T. Hardeman  
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Oklahoma City, OK 73101-1948

Mike J Rose  
4101 Perimeter Center Drive  
Suite 120  
Oklahoma City, OK 73112-2309

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Arvest Bank  
PO Box 399  
Lowell AR 72745

Bank Of America  
Po Box 982238  
El Paso TX 79998

(d) Bank of America  
PO Box 982238  
El Paso TX 79998-2238

Internal Revenue Service  
PO Box 745  
District Director  
Chicago IL 60690

Jpmcb Card  
Po Box 15369  
Wilmington DE 19850

Oklahoma Tax Commission  
Attn: Bankruptcy Division  
120 N Robinson Ste 2000  
Oklahoma City OK 73102

Pawnee Leasing Corp  
3801 Automation Way  
Ste 207  
Fort Collins CO 80525

Portfolio Recovery Associates, LLC  
POB 41067  
Norfolk VA 23541

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)First National Bank & Trust Co. Weatherfor  
4611 W. 6th Street  
Stillwater

(u)Gage Inc. LLP  
POB 223  
IA 52434

(u)John Special

End of Label Matrix

Mailable recipients	76
Bypassed recipients	3
Total	79